

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

ONE HOUR AIR CONDITIONING FRANCHISING, LLC,

Plaintiff,

v.

Case No. 09-C-0933

COMFORT SOLUTIONS, LLC,
MARCELLIN J. BARBIER, and

Defendants.

**PLAINTIFF'S CIVIL L.R. 7(h) EXPEDITED MOTION
FOR A NON-CONTACT ORDER**

Plaintiff, One Hour Air Conditioning Franchising, LLC (“One Hour”), filed this case following termination of the applicable franchise agreements to, among other things, enforce Marcellin Barbier’s (“Barbier”) post termination obligations. One Hour hereby moves, under Civil L.R. 7(h), for an order of the court which requires Barbier to refrain from contacting the employees of our local franchisee, until this litigation is terminated. This motion is based on Barbier’s callous and cruel email to innocent employees of our local franchise. In support of this Motion, One Hour advises the court as follows:

On Friday, February 19, 2010, Barbier sent an email to three employees of our local franchisee, Holland Service LLC (“Franchisee”): Steve Holland (the owner), Kurt Jaeckel and Tim Stuczynski. (Affidavit of Steve Holland at ¶ 2). This Franchisee has taken over several of the territories that had been previously operated by Barbier. Id. at ¶ 1.

In Barbier’s email to our Franchisee’s employees, he mocked a cancer victim and dredged up the most horrific memory a parent can have, the loss of a child. Mr. Barbier knows

Mr. Jaeckel from prior dealings (Holland Affidavit at ¶ 2). As such, Mr. Barbier knows Mr. Jaeckel lost one eye to cancer as a young child and must get through the rest of his life with only one functioning eye. Id. In his email, Barbier gratuitously calls Mr. Jaeckel the name “Cockeye,” a disparaging reference to Mr. Jaeckel’s disability. He then goes on to state: “I wouldn’t want you [to] crash on your way back to Valders.” Barbier knows full well that Mr. Jaeckel’s son was killed in a violent car crash on his way back to Valders just a few years ago. This reference can only be read as a cruel and callous reminder of Mr. Jaeckel’s son’s violent death. Id.

There can be absolutely no justification for mocking a partially blinded employee of our Franchisee or deliberately dredging up that employee’s terrible memories of the violent death of his child. These despicable statements were made for one purpose and one purpose only: to inflict as much personal pain as possible on innocent employees.

In addition to the despicable statements referenced above, Barbier’s email also makes vulgar references and calls our Franchisee’s employees vulgar names. While perhaps not as despicable as the statements addressed specifically to Mr. Jaeckel, they nevertheless have no place in the proper discourse between litigants or related parties. Mr. Barbier should not be permitted to use such cruel, vulgar and despicable tactics in relation to proceedings in this Court.

One Hour attempted to resolve this issue without the involvement of the Court by writing to Barbier’s counsel in order to request a stipulated non-contact order on February 22, 2010, but Barbier ignored the request. One Hour respectfully requests that this Court move swiftly to prevent any further attacks on these innocent employees and issue an order that prohibits Mr. Barbier from contacting the employees and owner of our Franchisee during the pendency of this lawsuit.

Dated this 24th day of February, 2010.

FOX, O'NEILL & SHANNON, S.C.
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